

personal representatives of the late *feme covert*, not to those of her deceased husband.(a)

A married woman, who is entitled to an undivided part of a real estate, cannot be, in any way, deprived of it without her express consent; which, by the common law, can only be obtained by a *fine*, or, under the acts of assembly, by her privy examination and acknowledgment of a deed conveying it to another. From necessity, and for the purpose of effecting a partition of a real estate, which is incapable of division without loss, it may be sold and converted into personalty. But a change of the nature of property, in order to attain a particular object, should not divest the owner of his right to it, to any extent whatever. The conversion of a real estate into personalty, for the purpose of thereby awarding to a *feme covert*, more fully and exactly than could otherwise be done, her due share of it, ought not to be allowed to operate so as to impair her right to it, or to lessen her absolute control over it in any way whatever. When a married woman petitions for, or consents to have a partition made of a real estate, in which she is entitled to an undivided interest, and acquiesces in a sale of it, for the purpose of making a just division of its value, because of its being difficult, or impracticable to make a correct partition of it in kind without mutual loss, she ought not to be considered as having, thereby, virtually agreed to have her own absolute right to her share transferred to another, or in any way lessened or impaired. For if that were the effect of the judicial proceeding, then the inevitable consequences of a suit for a partition, in all such cases, would be, that the suit itself would operate as a partial or total extinguishment of the rights and interest of the *feme covert*. Because, if, by a sale, for the purpose of effecting a partition, the wife's share is thereby converted into personalty, which her husband may, at pleasure and without her consent, reduce into possession, the result will be, that she may thus be divested of her real estate without her express consent; and even if the husband were allowed so to take the wife's share as personalty, subject to what is called the wife's equity, then she could only have a *portion* of it settled upon her; whereas the *whole* of the proceeds of sale awarded to her are, in truth, but the substitute for her realty; and therefore, to do her justice, the

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(a) *Leadenham v. Nicholson*, 1 H. & G. 275; *Hammond v. Stier*, 2 G. & J. 81; *Cary v. Taylor*, 2 Vern. 302.